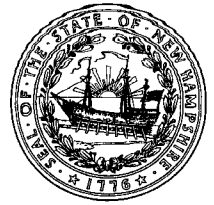




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

David J. Gale  
678 Old Homestead Highway  
East Swanzey, NH 03446

Re: Property at 647 & 649 Rte 10 Swanzey  
Wetland Bureau File #2005-1983

**ADMINISTRATIVE ORDER**  
**No. WD 06-004**

January 20, 2006

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to David J. Gale pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. David J. Gale is an individual having a mailing address of 678 Old Homestead Highway, East Swanzey, NH 03446.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. David J. Gale is the owner of land located at 647 and 649 Route 10 in Swanzey, more particularly described on the Swanzey Tax Map 73 as Lot 26 ("the Property").

5. On August 19, 2005, DES received a complaint from the Town of Swanzey alleging that fill had been placed in wetlands on property owned by David Gale and located on Route 10.
6. By letter dated August 31, 2005, DES notified David J. Gale of the complaint, requested that he refrain from further work and respond to the allegation in writing within 20 days of receipt of the letter.
7. On September 22, 2005, DES personnel conducted a site inspection of the Property and observed the following:
  - a. Approximately 8,800 square feet of fill had been placed in jurisdictional wetlands;
  - b. A drainage ditch had been excavated approximately 110 feet long and 5 feet wide, dredging approximately 550 square feet of jurisdictional wetland.
8. On October 3, 2005, DES issued a Letter of Deficiency ("LOD") WET 2005-32 to David J. Gale. The LOD requested that David J. Gale submit a restoration plan, prepared by a Certified Wetland Scientist, to DES for review and approval by December 1, 2005; and implement the restoration plan upon approval by DES.
9. On December 5, 2005, DES sent David J. Gale a reminder letter requesting that David J. Gale immediately submit the requested information in the LOD.
10. To date, DES has no record that a restoration plan has been received from Mr. Gale, or on his behalf.

#### **D. DETERMINATION OF VIOLATIONS**

1. David J. Gale has violated RSA 482-A:3, I, by filling approximately 8,800 square feet of wetland without a permit from DES.
2. David J. Gale has violated RSA 482-A:3, I, by dredging approximately 550 square feet of wetland to construct a drainage ditch without a permit from DES.

#### **E. ORDER**

Based on the above findings, DES hereby orders David J. Gale as follows:

1. **Within 10 days of the date of this Order**, retain a certified wetland scientist to develop restoration plans in accordance with Item 2 below, supervise the implementation of the restoration in accordance with Item 3 below, and to submit restoration progress reports.
2. **Within 15 days of the date of this Order**, submit a wetlands restoration plan to the DES Wetland Bureau for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration of the wetland and surface waters

impacted by activities at the Property. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
    - i. Existing conditions, with wetland boundaries; and
    - ii. Proposed conditions after reestablishing the jurisdictional areas;
  - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) to be installed prior to the start of restoration activities;
  - c. A detailed description of the method to be used for removal of the fill;
  - d. A detailed description of the type and quantity of wetland seed mix for the stabilization of the ditch and a proposed planting plan for the revegetation of the restoration area; and
  - e. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date.
  - f. A monitoring schedule, including submittal of two restoration monitoring reports to be completed at the end of each growing season, prepared by a Certified Wetland Scientist and submitted to the DES Wetlands Bureau. The restoration reports shall document restoration, including survival rate of the plantings in the restoration area and stabilization of the site.
3. Implement the restoration plan proposed in accordance with Item 2 above only after receiving written approval, and as conditioned, by DES. All restoration actions shall be completed by July 1, 2006.
4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Dawn Buker, Compliance Specialist  
DES Water Division  
P.O. Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
e-mail: dbuker@des.state.nh.us

#### F. APPEAL

Any person aggrieved by this Order may request that DES reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

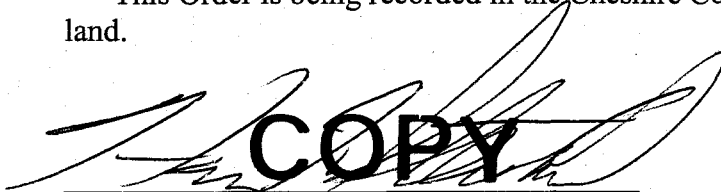
Filing an appeal or motion for reconsideration does not relieve David J. Gale of the obligation to

comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor David J. Gale's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Cheshire County Registry of Deeds so as to run with the land.



**COPY**

Harry T. Stewart, Director  
Water Division



**COPY**

Michael P. Nolin, Commissioner  
Department of Environmental Services

Certified Mail/RRR:

ec: Gretchen Hamel, Legal Unit Administrator  
Public Information Officer, DES PIP Office  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Dawn Buker, DES Wetlands Bureau  
cc: United States Army Corps of Engineers, Regulatory Office New England District  
Swanzey Board of Selectmen  
Swanzey Conservation Commission